

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION
CASE NO. 00-6025-CIV-MIDDLEBROOKS
MAGISTRATE JUDGE: BANDSTRA

ADVOCATES FOR THE DISABLED,
INC., a Florida not-for-profit corporation,
PETER SPALLUTO, individually, and
ERNST ROSENKRANTZ, individually,

Plaintiffs,

vs.

SEA CASTLE RESORT MOTEL
PARTNERSHIP, a Michigan General
Partnership, and MICHELE BROWNELL,
General Manager of Sea Castle Resort Inn,

Defendants.

CLERK OF COURT
U.S. DISTRICT COURT
S.D. OF FL. - MIAMI

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FILED BY 

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT,
MICHELE BROWNELL'S MOTION TO DISMISS SECOND AMENDED COMPLAINT**

The Plaintiffs, ADVOCATES FOR THE DISABLED, INC., PETER SPALLUTO and ERNST ROSENKRANTZ, by and through their undersigned counsel, and pursuant to the provisions of Rule 7.1C of the Local Rules of the United States District Court for the Southern District of Florida file the following Memorandum of Law in Opposition to the Defendant, MICHELE BROWNELL's Motion to Dismiss Second Amended Complaint.

Memorandum of Law

The Defendant, MICHELE BROWNELL, seeks dismissal of the Plaintiffs' claim brought against her pursuant to the provisions of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq. ("A.D.A.") asserting that pursuant to the provisions of Title III she is not a proper party Defendant. The Defendant, BROWNELL's argument is, however, based upon precedent completely unsupportive and inapplicable, and based upon a Affidavit which is false.

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The Second Amended Complaint asserts in paragraph 10 that the Defendant, BROWNELL, was the General Manager and operator of the place of public accommodation. The law states that a Complaint should not be dismissed unless it appears beyond doubt that the Plaintiff can prove no set of facts that which would entitle them to relief. Conley v. Gibson, 355 U.S. 41, 47 (1957). As to the viability of the cause action, the Court must accept all well pled allegations of the Complaint as true and all ambiguities or doubts concerning sufficiency of the claim must be resolved in favor of the pleador. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). "The issue is not whether the Plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

When the Complaint is viewed in the context of this standard, it is apparent that the Defendant's Motion to Dismiss must be denied. The Plaintiffs have provided the required short and plan statement of the claim, including allegations of disability, discrimination and of the Defendant being the operator of the place of public accommodation, 28 U.S.C. 12182(a).

The Defendant posits two separate arguments. First, the Defendant argues that an employee cannot be responsible under Title III. Defendant's reliance on Mason v. Stallings, 82 F. 3d 1007 (11th Cir. 1996), is completely misplaced. Mason addressed a claim under Title I of the A.D.A. The law is well settled, and the Plaintiffs do not dispute that under Title VII, the ADEA or Title I of the A.D.A. relief is admissible only as against employers and not individual employees.

The Defendant, BROWNELL, argues that based upon an Affidavit appended to the Motion to Dismiss she is not a General Manager of the Sea Castle Resort, and, therefore, cannot be considered an operator of the premises. Attached as Exhibit "A" to this Memorandum, however, is a copy of a business card provided to the Plaintiff by Michelle Brownell detailing she is, in fact, the General Manager. The Plaintiffs have not had the opportunity to depose the Defendant,

BROWNELL, and her argument might be more appropriate for Summary Judgment proceedings.

In conclusion, this Court should deny the Defendant, BROWNELL's Motion to Dismiss.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S.

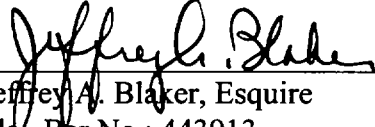
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